

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

SAM LUTFI,

Plaintiff and Respondent,

v.

LYNNE IRENE SPEARS,

Defendant and Appellant.

B218211

(Los Angeles County
Super. Ct. No. BC406904)

APPEAL from an order of the Superior Court of Los Angeles County. Zaven V. Sinanian, Judge. Affirmed.

Tantalo & Adler, Michael S. Adler and Joel M. Tantalo for Defendant and Appellant.

Joseph D. Schleimer for Plaintiff and Respondent.

Sam Lutfi (Lutfi) brought this action against Lynne Irene Spears (Spears) after Spears published statements about Lutfi in her memoir, *Through the Storm: A Real Story of Fame and Family in a Tabloid World* (the book). The causes of action Lutfi alleged against Spears include libel, defamation, and intentional infliction of emotional distress. In this appeal, Spears challenges an order denying her special motion to strike, brought pursuant to Code of Civil Procedure section 425.16 (section 425.16). We affirm the order of the trial court.

CONTENTIONS

Spears's main contention is that the trial court erred in declining to dismiss Lutfi's claims under the libel-proof doctrine. Spears also contends that, in the event that Lutfi's claims are not dismissed pursuant to the libel-proof doctrine, Lutfi's allegations arising from Spears's protected opinion should be stricken from the complaint.

FACTUAL BACKGROUND

Spears is the mother of the famous pop singer Britney Spears (Britney). Lutfi was Britney's manager between September 2007 and February 1, 2008. As Lutfi explained, he was involved "with almost every important decision in her life including, without limitation, the ongoing divorce proceedings and custody battle with Kevin Federline, the ongoing feud between Britney and her family, as well as her new album."

Soon after Lutfi's involvement with Britney became public, news articles were published questioning Lutfi's past. In an article dated October 23, 2007, on FoxNews.com, entitled "Britney's New Pals Raise Questions," Lutfi was described as a person who "had numerous tax liens and a couple of lawsuits brought against him." Another article published the following day compared Lutfi's involvement with Britney to Howard K. Stern's involvement in Anna Nicole Smith's life and death. And on December 5, 2007, US Magazine ran an article detailing "Britney Spears' New Pal Sam Lutfi's Disturbing Past." The article expressed the opinion that there may be "reason for concern," including the existence of two restraining orders against Lutfi based on "violent verbal and physical attacks." The article noted that Lutfi denied the allegations which formed the basis for one of the restraining orders. In January 2008, Blender

Magazine reported in depth on a third restraining order entered against Lutfi on behalf of a former friend of his. The article contained quotes from the individual, indicating that Lutfi had suggested that he kill himself, and stating that Lutfi sent text messages and called him incessantly after their friendship ended.

On February 1, 2008, the Los Angeles Superior Court placed Britney under a temporary conservatorship in the case *Conservatorship of the Person of Britney Jean Spears*, case No. BP108870. Britney's father, James P. Spears (James), was named as temporary conservator, and was granted the power to prosecute civil harassment restraining orders. On the same date, James filed a request for a restraining order on behalf of Britney against Lutfi, alleging that Lutfi "drugged" her, cut her home phone line and removed her cell phone chargers, "yell[ed]" at her, and claimed to control everything. James also referred to the declaration of Spears, which was attached.

In the declaration, Spears related an attempt at "intervention" that she and James had made on January 28, 2008. She claimed that Lutfi had gotten Britney out of the house when he learned that they were coming. She also alleged that Lutfi had disabled all of Britney's cars. She heard that Lutfi and Britney had gotten into a fight that night, in which Lutfi had told Britney that she was an "unfit mother, a piece of trash and a whore, that she cares more about . . . her current boyfriend, than she cares about her kids, and that she does not deserve her kids." Spears noted that there was a car battery in the middle of the kitchen table, and that Lutfi indicated that he had disposed of all the phone chargers in the house. She also stated that Lutfi informed her that he had been grinding up Britney's pills and putting them in her food, which was why she was so quiet for the last few days. Lutfi indicated that if he weren't in the house to give Britney her medicine, she would kill herself. He allegedly stated to Spears, "If you try to get rid of me, she'll be dead and I'll piss on her grave." According to the declaration, Britney's then boyfriend, Adnan Ghalib (Adnan), informed Spears that Lutfi "hides the phones and tells her he has lost them. He also hides her dog, London. She looks for him all over the house crying and then [Lutfi] brings out the dog from the hiding place and acts like her savior."

The superior court issued the restraining order, which restrained Lutfi from directly or indirectly attempting to contact Britney. It further required Lutfi to stay at least 250 yards away from Britney as well as the homes of Britney, her children, her siblings, and her parents.

The contents of Spears's declaration became public a few days later. Articles in numerous publications nationwide referred to the statements in Spears's declaration. In addition, portions of the declaration were made public in television broadcasts on MSNBC and CNN.

The book was released to the public on or about September 16, 2008, more than six months after the contents of Spears's declaration became public. The book accuses Lutfi of "planning evil," and of "hostility, cruelty and lies." In the book, Spears refers to Lutfi as a "predator," a "fake," and a "shifty" man, asserting that he had Britney "in his clutches" and making the claim that Lutfi controlled the paparazzi and used them as his "henchmen."

Spears also made the following statements in her book, which Lutfi disputes:

"[Lutfi] told Jackie and me that he grinds up Britney's pills, which were on the counter and included Risperdol and Seroquel, and puts them in her food. He said that was the reason she had been quiet for the last three days. She had been drugged and asleep. He said that her doctor was trying to get her into a sleep-induced coma so that they could then give her other drugs to treat her."

"The general [Lutfi] told us that he threw away all of Britney's phone chargers and disabled the house phones by cutting the wires. He also disabled several of Britney's cars so she couldn't leave unattended."

"He then told us to tell Britney that Adnan is gay."

"Adnan told me that [Lutfi] hid Britney's cell phones and told her that he lost them."

"Adnan told me that [Lutfi] also would hide Britney's dog, London. She would look all over the house, crying, and then [Lutfi] would bring out the dog and act like some sort of savior."

“[H]e told me that if he weren’t in the house to give Britney her medicine, she would kill herself. ‘If you try to get rid of me, she’ll be dead, and I’ll piss on her grave.’”

According to Lutfi, the “theme” of the book was that Lutfi was a “Svengali,” who isolated and controlled Britney by doping her without her knowledge, cutting off her telephone access and mobility, and setting himself up as “gatekeeper.” As part of this theme, Lutfi alleges, Spears falsely claimed: “[T]here was no one [Lutfi] wanted to keep the gate closed to more than Britney’s family.”

PROCEDURAL HISTORY

Lutfi filed a complaint against Spears in February 2009.¹ His first amended complaint (FAC), filed April 16, 2009, stated causes of action for libel, defamation, and intentional infliction of emotional distress, among others. Lutfi alleged that the facts set forth above were false and libelous and that he had been harmed as a result of the publication of those facts in the book. Lutfi further alleged that he had been defamed by the book because it referred to him as a “fake,” a “Svengali,” a “predator,” a “gatekeeper,” and “the General,” and because Spears accused Lutfi of using paparazzi as his “foot soldiers” and “henchmen.” Lutfi alleged that Spears’s actions in libeling and defaming him constituted intentional infliction of emotional distress.

On June 15, 2009, Spears filed a notice of motion and special motion to strike pursuant to section 425.16, challenging the causes of action for libel, defamation, and intentional infliction of emotional distress. Spears argued that the causes of action arose from protected speech. Further, Spears argued that Lutfi was unlikely to prevail on his claims against her. Specifically, Spears argued that: (1) Lutfi’s second cause of action for defamation must fail because it concerned only protected opinion, not statements of fact; (2) the factual statements Lutfi disputed were true; (3) Lutfi was “libel-proof” -- in other words, he was not harmed by the statements in the book because they had been previously published by the news media in connection with Spears’s declaration in

¹ James and Britney were also named as defendants.

support of the restraining order; and (4) Lutfi's claim for intentional infliction of emotional distress must fail along with his claims of libel and defamation.

In support of his opposition to Spears's special motion to strike, Lutfi filed a declaration. In it, he attested that the statements made about him in the book were defamatory and libelous, and subjected him to death threats, public harassment, insults and racial slurs. In addition, he claimed to be unable to secure employment, resulting in a substantial loss of income. Lutfi denied throwing away Britney's phone chargers, disabling the home phone, stating that Adnan was gay, admitting to grinding up pills and putting them in Britney's food, or disabling Britney's cars.

Lutfi also filed declarations of four third-party witnesses. Robin Johnson was a "Supervised Visitation Monitor" who had been hired by Britney's attorneys to monitor, witness and report on Britney's interaction with her two children. Johnson attested to the falsity of Spears's statements that Lutfi cut Britney's phone wires, disabled Britney's automobiles, and attempted to drug Britney into a coma. Alli Sims was a personal assistant to Britney, who was residing at Britney's home between February 2007 and October 2007, and thereafter was in contact with Britney nearly every day. Sims also negated Spears's statements that Lutfi had disabled cell phones, the home phones, or automobiles. Adnan, who was Britney's boyfriend during the relevant time period, also declared that Spears's assertions regarding disabling the telephones were false. In addition, based on his personal knowledge, Adnan asserted his disbelief of Spears's statement that Lutfi was grinding up pills and putting them in Britney's food. Finally, Felipe Teixeira, a photographer who visited Britney's home and drove around town with her, also refuted Spears's claim that Lutfi cut telephone wires and disabled Britney's cars.

The special motion to strike was heard on July 23, 2009. Following argument, the court took the matter under submission. On July 29, 2009, the court issued its ruling denying Spears's motion. The court explained that its analysis would be a two-part determination: first, a decision as to whether [Spears] made a threshold showing that the challenged causes of action arose from protected speech; and second, a determination of whether [Lutfi] had demonstrated a probability of prevailing on his claims.

The court first held that section 425.16 applied to Spears's statements in the book. The court found that the claims "fit neatly into the category of statements or conduct described by . . . Section 425.16 (e)(3)." The court then moved to its analysis of Lutfi's probability of prevailing.

The court stated its position that Lutfi's claims for libel and defamation were duplicative, as libel is a subset of defamation. The court noted that Lutfi was "a limited public figure in connection with his relation with Britney, and therefore must show that the statements were made with knowledge of falsity or with reckless disregard as to their truth."

The court declined to apply the libel-proof doctrine, noting that it is to be "applied with caution, since so few plaintiffs will have so bad a reputation that they are not entitled to obtain redress for defamatory statements." The court found that the "complaint is not merely based upon statements of opinion or expressions of ridicule by Spears, but also alleges the publication of factual allegations concerning Lutfi's conduct which he asserts are false." The court thus found that the complaint was legally sufficient as to libel and defamation, and that Lutfi had provided sufficient evidence to support those claims as a prima facie matter. Finally, the court held that the cause of action for intentional infliction of emotional distress was legally cognizable and supported by sufficient evidence to establish Lutfi's probability of prevailing. Spears's motion was denied in its entirety.

Spears filed her notice of appeal on August 11, 2009.

DISCUSSION

I. Applicable law and standard of review

A special motion to strike under section 425.16, also known as the "anti-SLAPP" statute, allows a defendant to seek early dismissal of a lawsuit involving a "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or California Constitution in connection with a public issue." (§ 425.16, subd. (b)(1).) "SLAPP is an

acronym for ‘strategic lawsuit against public participation.’” (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.)

Actions subject to dismissal under section 425.16 include those based on any of the following acts: “(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e).)

“A SLAPP is subject to a special motion to strike ‘unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.’ (§ 425.16, subd. (b)(1).) Thus, evaluation of an anti-SLAPP motion requires a two-step process in the trial court. ‘First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one “arising from” protected activity. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim.’ [Citations.]” (*Nygaard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1035 (*Nygaard*).) “Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute--i.e., that arises from protected speech or petitioning *and* lacks even minimal merit--is a SLAPP, subject to being stricken under the statute.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

“Review of an order granting or denying a motion to strike under section 425.16 is de novo. [Citation.] We consider “the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based.” (§ 425.16, subd. (b)(2).) However, we neither “weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate

the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." [Citations.]” (*Nygard, supra*, 159 Cal.App.4th at p. 1036.)

II. The lawsuit is subject to section 425.16

The first step in our analysis is to determine whether Spears has made a threshold showing that the challenged cause of action is one “arising from” protected activity. (§ 425.16, subd. (b)(1).) A defendant in a SLAPP lawsuit bears the initial burden of showing that the suit “falls within the class of suits subject to a motion to strike under section 425.16.” (*Nygard, supra*, 159 Cal.App.4th at p. 1036.)

The statements made in Spears's book were accessible to the public and were made in connection with an issue of public interest. (§425.16, subd. (e).) Lutfi does not dispute that the causes of action at issue fall within the class of suits subject to a special motion to strike. We therefore move on to the second step in the analysis.

III. Lutfi has established a probability of prevailing

We next must analyze whether Lutfi has shown a probability of prevailing on his claims. Lutfi does not dispute the court's finding that he was a limited public figure in connection with his relationship with Britney. However, despite this finding, and the consequent requirement that Lutfi show that the statements were made with knowledge of falsity or with reckless disregard as to their truth, the court found that Lutfi had met his burden of demonstrating that his libel, defamation and intentional infliction of emotional distress causes of action should be permitted to proceed.

Spears makes three main arguments challenging this finding. First, she argues that the trial court erred in failing to apply the libel-proof doctrine. Second, she argues that we should reject Lutfi's evidence of damages because such evidence is implausible and conclusory. And finally, in the event that this court affirms the trial court's decision on the applicability of the libel-proof doctrine, Spears argues that Lutfi's defamation cause of action is founded on protected opinions and must be dismissed. We address these arguments separately below.

A. The libel-proof doctrine

The libel-proof doctrine applies where a plaintiff's reputation is already so badly tarnished that he cannot be further injured by allegedly false statements on that subject. (*Guccione v. Hustler Magazine, Inc.* (2d Cir. 1986) 800 F.2d 298, 303 (*Guccione*).)² “An individual who engages in certain anti-social or criminal behavior and suffers a diminished reputation may be ‘libel proof’ as a matter of law as it relates to that specific behavior [citations].” (*Wynberg v. National Enquirer* (C.D. Cal. 1982) 564 F.Supp. 924, 928 (*Wynberg*)). In addition, “if an individual’s general reputation is bad, he is libel proof on all matters [citations].” (*Ibid.*) Criminal convictions with attendant publicity may also make an individual libel proof. (*Ibid.*) However, “[t]he libel-proof plaintiff doctrine is to be applied with caution . . . , since few plaintiffs will have so bad a reputation that they are not entitled to obtain redress for defamatory statements, even if their damages cannot be quantified and they receive only nominal damages.” (*Guccione, supra*, at p. 303.) The libel-proof doctrine is reserved for cases where “the person’s reputation is already so low . . . even nominal damages are not to be awarded.” (*Ibid.*)

Spears asks us to be the first California state court to apply the libel-proof doctrine to dismiss claims of libel and defamation.³ Spears’s argument that the libel-proof doctrine should be applied to this matter focuses on the element of harm.⁴ Spears argues that any harm to Lutfi was not caused by her statements in the book, but caused by the statements she made in her January 31, 2008 declaration to the superior court which

² No California state court has ever adopted the libel-proof doctrine. Therefore, we rely on foreign authority to describe it.

³ The libel-proof doctrine may be applied as a matter of law where the evidence conclusively disproves the possibility that the plaintiff was harmed by the publication. (*Guccione, supra*, 800 F.2d at p. 304.)

⁴ The tort of defamation requires a either a showing of actual harm or injury, or that the publication has a tendency to injure a person in his occupation. (*Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1470-1471.) Libel, which is a subset of defamation (see Civ. Code, § 44), has the same required element. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 720.)

resulted in the temporary restraining order. Those statements, Spears points out, are absolutely privileged. (Civ. Code, § 47, subd. (b); *Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 955.) Because the news media undertook to publish the statements she made in her declaration, Spears argues, Lutfi's reputation was already so tarnished that Spears's subsequent publication of the same information in her book did nothing to change Lutfi's standing in the public eye.

Spears acknowledges that no published state court decision in California has applied the libel-proof doctrine. Spears argues the United States District Court for the Central District of California concluded that the doctrine applies under California law. (*Wynberg, supra*, 564 F.Supp. at pp. 927-929.) However, *Wynberg* is not binding on this Court. (*People v. Daan* (1984) 161 Cal.App.3d 22, 28, fn. 2 [California courts are not required to follow decisions of the federal district courts or courts of appeal].)

We decline to apply the libel-proof doctrine to dismiss Lutfi's causes of action in this matter because this is not an appropriate case for application of the doctrine. As set forth below, this matter is factually distinguishable from the federal cases on which Spears relies. In sum, those cases depict factual scenarios in which the plaintiff's reputation is tarnished by criminal convictions or specific acknowledgement of the acts of which the plaintiff has been accused.

Wynberg involved an action brought by Henry Wynberg against the National Enquirer for making certain statements regarding Wynberg's relationship with Elizabeth Taylor. The "gist" of the article was that Wynberg used the relationship for financial gain. (*Wynberg, supra*, 564 F.Supp. at p. 925.) In determining that the libel-proof doctrine applied, the district court noted that plaintiff had both a general reputation for taking advantage of women, as evidenced by five criminal convictions, as well as a specific reputation for taking financial advantage of Elizabeth Taylor, as evidenced by numerous articles published over the course of three years without objection from Wynberg. (*Id.* at pp. 928-929.) In contrast, Lutfi has no criminal convictions which would suggest a general propensity towards the type of behavior described by Spears. And, while the news media did publish the statements made by Spears in support of the

restraining order, those articles made it clear that the statements were allegations set forth in court documents. For example, the Houston Chronicle reported that “[a] restraining order against Britney Spears’s friend and manager Sam Lutfi alleges that he drugged the pop star, took over her life and finances and for months controlled the ravenous pack of paparazzi.” Similarly, the Los Angeles Times reported that “[Britney] Spears’ mother, in an application for a restraining order, accused her daughter’s friend and sometime manager . . . of cutting the singer’s phone lines, disabling her vehicles and grinding up pills to place in her food.” Thus, despite the publicity surrounding Spears’s declaration, the majority of articles described Spears’s statements as allegations, accusations, or charges -- a proper characterization of those statements, which permitted the public to understand that the statements were not proven fact.⁵

Guccione involved an action brought by Robert Guccione, the publisher of *Penthouse* magazine, against *Hustler* magazine, based on a statement published in *Hustler* stating that Guccione “is married and also has a live-in girlfriend, Kathy Keeton.” (*Guccione, supra*, 800 F.2d at p. 299.) The United States Court of Appeals, Second Circuit, determined that Guccione’s claims failed because (1) they were substantially true; and (2) Guccione was libel-proof as to the accusation of adultery. (*Ibid.*) In discussing the libel-proof doctrine, the Second Circuit noted that it is not limited to plaintiffs with criminal records. (*Id.* at p. 303.) Despite the fact that Guccione had not been criminally convicted of adultery, the court nevertheless found him libel-proof on the subject. Guccione had testified that for a 13-year period, his relatives, friends, and business associates knew that he was living with Keeton while still legally married. He further acknowledged that he never hid either his marriage or his relationship with

⁵ As Spears acknowledges, Lutfi could not sue her for the statements she made in her declaration to the superior court, as those statements were protected under Civil Code section 47, subdivision (b). Nor could Lutfi sue the news media, which accurately depicted such statements as *allegations* made in court documents. (Civ. Code, § 47, subds. (b) & (d).) Thus, in contrast to *Wynberg*, Lutfi cannot be faulted for failing to object to the publication of Spears’s statements.

Keeton from anyone. In addition, numerous articles had described Guccione's marital status and his contemporaneous relationship with Keeton. (*Id.* at p. 304.) The court concluded that the articles, in combination with Guccione's testimony, showed wide dissemination of information regarding his adultery. Thus, the court concluded, any subsequent publication could not further injure his reputation. (*Ibid.*)

The facts of the matter before us are not comparable to the cases described above. Significantly, Lutfi was neither convicted of any offenses related to the alleged behavior described in the book, nor did he admit to such behavior.⁶ And while news media did report on the allegations made in Spears's declaration to the superior court, such reports accurately depicted those allegations as unproven accusations made in a court filed document. In addition, Lutfi argues, the media circus surrounding those allegations faded quickly and Lutfi was able to return to a life away from the media in the months that followed. This brief notoriety does not compare with the years of negative publicity described in *Wynberg* and *Guccione*. (See *Wynberg, supra*, 564 F.Supp. at p. 929 [indicating that the relevant articles had appeared "for three years prior to the Enquirer's publication"]; *Guccione, supra*, 800 F.2d at p. 304 [prior articles regarding Guccione's adultery were printed in the early- to mid-1970's, with another one printed in 1978].)

As explained in *Stern v. Cosby* (S.D.N.Y. 2009) 645 F.Supp.2d 258, 270 (*Stern*), "the libel-proof plaintiff doctrine is to be sparingly applied, as it is unlikely that many plaintiffs will have such tarnished reputations that their reputations cannot sustain further

⁶ Spears points to one article that appeared in US Magazine which reported that Lutfi admitted giving Britney "a handful of pills." However, a reading of the entire article reveals that the statement was made in the context of a discussion of Britney's bipolar disorder and her treatment for that disorder. Lutfi indicated that the pills were "working wonders," and that Britney had agreed that the "meds" were "helping her sleep." This public "admission" does not constitute an admission to the facts set forth in the book, which accuse Lutfi of grinding up pills and putting them in her food without her knowledge.

damage.”⁷ The *Stern* court noted that a plaintiff “should not be precluded from seeking damages for being defamed by the Book merely because he was the subject of critical discussion on tabloid television and in celebrity gossip magazines.” (*Ibid.*) Even assuming that such discussion had occurred, Stern denied those accusations -- as Lutfi does here. “That someone has been falsely called a thief in the past does not mean that he is immune from further injury if he is falsely called a thief again.” (*Id.* at pp. 270-271.)

We find that Lutfi’s reputation was not so badly tarnished by the allegations in Spears’s court filed declaration as to be immune from further damage. Thus, we decline to be the first California state court to apply the doctrine, and we affirm the trial court’s decision.

B. Evidence of damages

Spears argues that, regardless of the application of the libel-proof doctrine, we “can and should ignore Lutfi’s implausible and conclusory allegations about suddenly becoming subject to harassment based on the publication of a book without any new information.” Spears asks that we apply the summary judgment standard to find that “an issue of fact is not raised by “cryptic, broadly phrased, and conclusory assertions.” [Citations.]” (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 525.)

As set forth in *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26 (*Gilbert*), the burden on Lutfi to show a probability of prevailing is similar to the standard used in determining motions for summary judgment. Lutfi’s prima facie showing must be made through competent and admissible evidence, and may not be supported by declarations that lack foundation or personal knowledge.

Lutfi’s declaration, filed in opposition to Spears’s special motion to strike, is based on personal knowledge. In the declaration, Lutfi attests that since the publication of the book, he has received “numerous threatening letters and death threats.” Lutfi also alleged

⁷ The *Stern* decision also notes that, in the wake of the Supreme Court’s decision in *Masson v. New Yorker Magazine* (1991) 501 U.S. 496, 523, there is some question as to whether the libel-proof doctrine is still valid. (*Stern, supra*, 645 F.Supp.2d at p. 270.)

that he had been harassed and cajoled in public, spit upon, and that he feared for his safety. Since the publication of the book, Lutfi claimed, he has been unable to secure employment in the entertainment industry, resulting in a loss of potential income.

We do not weigh the credibility or probative strength of this evidence. (*Gilbert, supra*, 147 Cal.App.4th at p. 27.) The evidence is competent and admissible, and suffices to provide prima facie evidence of damages. We decline to disregard Lutfi’s declaration as too conclusory, as Spears requests. Instead, we find that it is sufficient to support a prima facie claim, and we leave it to the fact finder to weigh the credibility and strength of this evidence.⁸

C. The defamation cause of action

In her final argument, Spears contends that even if the libel-proof doctrine does not resolve the entire case, Lutfi’s allegations arising from Spears’s protected opinion should be stricken from the complaint.

The FAC sets forth separate causes of action for libel and defamation. In his libel cause of action, Lutfi pointed to the statements in the book relating to specific actions, such as throwing away Britney’s phone chargers, grinding up Britney’s pills, hiding her dog, and disabling her cars. In his defamation cause of action, Lutfi describes pejorative references to him as a “fake,” a “Svengali,” a “predator,” a “gatekeeper, and “the General.” In the defamation cause of action, Lutfi also alleges that in her book, Spears “indirectly” accused him of “conduct that is despicable, dishonest, improper, immoral and potentially criminal.”

Spears argues that there is First Amendment protection for any statement that cannot be interpreted as stating an actual fact about an individual, as opposed to a mere opinion. (*Rosenaur v. Scherer* (2001) 88 Cal.App.4th 260, 279 [quoting *Milkovich v.*

⁸ Lutfi has also invoked the doctrine of libel per se, which allows for the recovery of general damages based on the intrinsically defamatory nature of the false statements. (*Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439, 450 [“In matters of slander that are libelous per se, for example the charging of a crime, general damages have been presumed as a matter of law”].) Because Lutfi has set forth sufficient evidence to support a prima facie case of damages, we need not reach this issue.

Lorain Journal Co. (1990) 497 U.S. 1, 16 (*Milkovich*).) She contends that Lutfi did not specify what provably false facts are implied by the terms “fake,” “Svengali,” and the like -- therefore these terms should be considered protected value judgments. To the extent Lutfi can proceed at all, Spears argues, his cause of action for defamation must be stricken.

Lutfi argues in response that Spears is seeking to “parse” the libelous narrative, separating out individual words. In addition, as the Supreme Court noted in *Milkovich*, “expressions of ‘opinion’ may often imply an assertion of objective fact.” (*Milkovich, supra*, 497 U.S. at p. 18.) The dispositive question is whether a reasonable fact finder could conclude that the statements at issue imply a defamatory assertion. (*Id.* at p. 21.) “To determine whether a statement is actionable fact or nonactionable opinion, courts use a totality of the circumstances test of whether the statement in question communicates or implies a provably false statement of fact. [Citation.] Under the totality of the circumstances test, ‘[f]irst, the language of the statement is examined. For words to be defamatory, they must be understood in a defamatory sense. . . . [¶] Next, the context in which the statement was made must be considered.’ [Citation.]” (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 113.)

We agree with Lutfi that, under the circumstances of this case, Spears’s statements should not be segregated into statements of provable fact and statements of opinion. Spears’s purported opinions that Lutfi was, among other things, a “predator,” a “Svengali,” and a “fake,” were intertwined with her specific statements about his actions during the time that he was working closely with Britney. In fact, all of the allegedly libelous and defamatory statements are contained within the same three chapters of the book, which were attached to Lutfi’s complaint. The purported “opinions” were meant to be understood in a defamatory sense, and were meant to be understood in the context of Spears’s specific statements about Lutfi’s conduct. Under these circumstances, we

decline to segregate and dismiss those statements set forth in Lutfi’s cause of action for defamation.⁹

IV. Intentional Infliction of Emotional Distress

Spears argues that Lutfi’s intentional infliction of emotional distress claim is a “me too” claim that merely incorporates the prior allegations relating to alleged libel and defamation. Spears asserts that the collapse of the libel and defamation claims spells the demise of the intentional infliction of emotional distress claim. Because we have held that Lutfi’s libel and defamation claims survive Spears’s special motion to strike, this argument fails.

DISPOSITION

The order is affirmed. Appellant is ordered to pay the costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST

⁹ In addition, as the trial court pointed out, libel is a subset of defamation. (Civ. Code, § 44.) Because Lutfi’s cause of action for libel and his cause of action for defamation involve the same chapters of the book, and concern statements which imply the same type of conduct, they may be considered to be duplicative.